

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JANE DOE,

Plaintiff,

-against-

INTERIM ORDER
21-CV-4580 (JS) (LGD)

JAVIER GONZALEZ,

Defendant.

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Appearances:

For Plaintiff: Travis Pierre-Louis, Esq.
Julia Elmaleh-Sachs, Esq.
Crumiller P.C.
16 Court Street, Suite 2500
Brooklyn, New York 11241

For Defendant: No appearance

SEYBERT, District Judge:

Presently before the Court is the August 4, 2023 Report and Recommendation ("R&R") (see ECF No. 22) of Magistrate Judge Lee G. Dunst regarding the Motion for Default Judgment (the "Default Judgment Motion") (see ECF No. 19) of Plaintiff, Jane Doe ("Plaintiff"). Defendant Javier Gonzalez ("Defendant") has not filed any objections to the R&R, which was served upon him on August 4, 2023. (See Aff. of Serv., ECF No. 23.) However, in its initial review of the unopposed R&R, the Court is unable to verify whether the underlying Default Judgment Motion has been served upon Defendant in compliance with this District's Local Civil Rule

55.2(c).¹ Compare Case Docket, in toto, with S.D.N.Y. & E.D.N.Y. Joint Local Civil Rule ("Local Civil Rule") 55.2(c).

"Where the movant is represented by counsel . . . a motion for default judgment will not be granted unless the party making that motion adheres to certain local and individual rules." Tenemaza v. Eagle Masonry Corp., No. 20-CV-0452, 2021 WL 8317120, at *3 (E.D.N.Y. July 22, 2021) (quoting Bhagwat v. Queens Carpet Mall, Inc., No. 14-CV-5474, 2015 WL 13738456, at *1 (E.D.N.Y. Nov. 24, 2015); internal quotation marks omitted). Noncompliance with Local Civil Rule 55.2 "warrants denial of the motion for default judgment." Id. (citing Allstate Ins. Co. v. Abramov, No. 16-CV-1465, 2019 WL 1177854, at *3 (E.D.N.Y. Feb. 21, 2019), report and recommendation adopted, 2019 WL 1172381 (E.D.N.Y. Mar. 13, 2019)). More specifically:

Local Civil Rule 55.2(c) . . . requires that "all papers submitted to the Court pursuant to Local Civil Rule [55.2(b)] shall simultaneously be mailed to the party against whom a default judgment is sought at the last known residence of such party (if an individual) Proof of such mailing shall be filed with the Court. If the mailing is returned, a supplemental affidavit shall be filed with the Court setting forth that fact, together with the reason provided for return, if any." Local Civ. R. 55.2(c). Service of the motion on non-appearing defendants is of

¹ The Affidavit of Service submitted in support of Plaintiff's Default Judgment Motion regards the service of Plaintiff's Amended Complaint and the accompanying summons and not the Default Judgment Motion. (See "Proof of Service," Ex. 2, ECF No. 20-2, attached to Supp. Decl., ECF No. 20.)

particular importance because "mailing notice of such an application is conducive to both fairness and efficiency[.]" Committee Note, Local Civ. R. 55.2.

Tenemaza, 2021 WL 8317120, at *4 (citing Transatlantic Auto Grp., Inc. v. Unitrans-Pra Co., No. 08-CV-5070, 2011 WL 4543877, at *20 (E.D.N.Y. Sept. 9, 2011) (noting the Local Civil Rules relating to default judgments provide more protection for non-appearing defendants than the Federal Rules of Civil Procedure in order to promote fairness and efficiency), report and recommendation adopted, 2011 WL 4543838 (E.D.N.Y. Sept. 29, 2011)) (emphases added). Hence, "[f]ailure to strictly comply with Local Civil Rule 55.2(c) is sufficient ground for denying a motion for default judgment." Id. (citing United States v. Hamilton, No. 18-CV-2011, 2019 WL 6830318, at *2-3 (E.D.N.Y. Nov. 26, 2019), report and recommendation adopted, 2019 WL 6828276 (E.D.N.Y. Dec. 13, 2019) (denying plaintiff's default judgment motion for failing to comply with Local Civil Rule 55.2(c)) (collecting cases); further citation omitted); see also Gordon v. APS Contractors Inc., No. 21-CV-0259, 2023 WL 2574740, at *4 (E.D.N.Y. Mar. 20, 2023) (finding that, where plaintiff failed to file proof of service of second default judgment motion upon defendant "or to otherwise indicate that the second motion had been mailed to [defendant]," such failure alone warranted denial of said motion).

Thus, notwithstanding Plaintiff's service of the R&R upon Defendant, given this Court's adoption of Local Rule 55.2(c), which is based on notions of "fairness and efficiency", Comm. Note, Local Rule 55.2, the Court will hold in abeyance its consideration of the R&R pending further filings.

Accordingly, **IT IS HEREBY ORDERED** that:

- (1) If Plaintiff has already mailed to Defendant "all papers submitted to the Court" in conjunction with her Default Judgment Motion, then by no later than September 5, 2023, Plaintiff is to file her Local Civil Rule 55.2(c) proof of mailing of said papers; thereafter, the Court will proceed to consider the R&R regarding Plaintiff's Default Judgment Motion;
- (2) If Plaintiff has **not** already mailed to Defendant "all papers submitted to the Court" in conjunction with her Default Judgment Motion:
 - (a) by no later than September 5, 2023, Plaintiff is to:
 - (i) mail said papers to Defendant and file proof of such mailing, see Local Civil Rule 55.2(c);
and
 - (ii) mail a copy of this Interim Order to Defendant and file proof of such mailing;

(b) if necessary, Plaintiff is to file a supplemental affidavit if her mailings are returned; thereafter, the Court will proceed to consider the R&R regarding Plaintiff's Default Judgment Motion; and

(c) **DEFENDANT WILL BE DEEMED TO BE ON NOTICE** that:

(i) He shall have fourteen (14) days from service of Plaintiff's Default Judgment Motion to file a response, if any;

(ii) Any timely response by Defendant may be construed by this Court as objections to the related R&R (previously served upon him); and

(iii) After the expiration of the aforementioned 14-day period, the Court will proceed to consider the related R&R.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: August 29, 2023
Central Islip, New York